certify to the plaintiff whether it has distributed this Final Judgment and the notification in accordance with Section V above.

(B) For each year of the term of this Final Judgment, defendant shall file with the plaintiff, on or before the anniversary date of entry of this Final Judgment, a statement as to the fact and manner of its compliance with the provisions of Section V above.

(C) If defendant's Antitrust Compliance Officer learns of any violation of Sections IV of this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VII

Inspection

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant be permitted: (1) Access during regular business office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) to interview defendant's officers, members, employees, and agents concerning such matters. The interviews shall be subject to the defendant's reasonable convenience and without restraint or interference from the defendant. Counsel for the defendant or counsel for the individual interviewed may be present at the interview.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section VII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

Term

This Final Judgment shall expire five (5) years from the date of entry.

IX

Power To Modify

Jurisdiction is retained by this Court to enable any of the parties to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

X

Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties, Act, 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the three proposed Final Judgments submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On March 14, 1994, the United States filed a civil antitrust Complaint alleging that the defendants and co-conspirators unreasonably conspired to restrain wage competition among themselves in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The Complaint alleges that, from at least as early as January, 1984 and continuing through June, 1992, the defendants and co-conspirators conspired to exchange current and prospective, nonpublic registered-nurse entry wage information with the purpose and effect of restraining wage competition for registered nursing services in Salt Lake County, Utah.

The conspiracy was effectuated through telephone calls and written surveys between the hospital defendants and co-conspirators, and through meetings of the Utah Society for Healthcare Human Resources Administration ("USHHRA") and the Utah Hospital Association ("UHA"), both of which consist of human resource directors from the hospital defendants. The hospital defendants agreed to exchange prospective and current compensation information. The conspiracy had the effect of depriving registered nurses in Salt Lake County and elsewhere in Utah of the benefits of free and open competition in the purchase of registered nursing services. In addition, the conspiracy resulted in smaller annual increases in the registered-nurse entry wage than the hospital defendants would have paid absent the conspiracy.

The Complaint seeks to prevent the defendants from continuing or renewing the alleged conspiracy, or from engaging in any other conspiracy, or adopting any practice having a similar purpose of effect for a period of 5 years.

The defendants will be required to file annual reports with the Court and the Government certifying that they have complied with the terms of section V of their respective Final Judgments.

Entry of the proposed Final Judgments will terminate the action against all the defendants, except that the Court will retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce, or modify the Judgment, or to punish violations of any of its provisions.

II

Description of the Practices Involved in the Alleged Violations

At trial, the Government would have made the following contentions: 1. The hospital defendants, St. Benedict's Hospital, IHC Hospitals, Inc. ("IHC"), Holy Cross Hospital of Salt Lake City, Pioneer Valley Hospital, Inc., Lakeview Hospital, Inc., Mountain View Hospital, Inc., Brigham City Community Hospital, Inc., and HCA Health Services of Utah, Inc. d/b/a St. Mark's Hospital, provide and sell general acute-care hospital services and recruit and hire nurses. The hospital defendants located in Salt Lake County compete with each other in recruiting and hiring nurses and purchase approximately 75% of the registered nursing services in that County.

2. On a regular basis, the hospital defendants telephoned one another and exchanged nonpublic prospective and current wage and budget information for nurses. On a number of occasions, hospital defendants told each other, including IHC, of their intent to match whatever registered-nurse entry wage IHC eventually adopted.

3. On at least eight occasions between 1984 and 1992, some or all of the hospital defendants attended meetings organized by USHHRA for the express purpose of exchanging nonpublic prospective and current wage and budget information about registered nursing wages.

4. Annually, IHC collected current and nonpublic prospective wage and budget information from the other hospital defendants for use in a published wage survey that was distributed to the other hospitals. IHC used this information to limit its registered-nurse wage increases.

5. Annually, the UHA collected current and, in some years, prospective information pursuant to a survey designed by the hospital defendants. This information was published and distributed to the hospital defendants, which use this information to limit registered-nurse wage increases.

6. As a direct result of these wage and budget exchanges, the hospital defendant's registered-nurse entry wages in Salt Lake County and elsewhere in Utah were kept artificially low, and registered nurses were paid these lower wages from 1984 through June, 1992.

III

Explanation of the Proposed Final Judgments

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgments after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h). Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgments may not be entered unless the Court finds that entry is in the public interest. Section X of each of the three proposed Final Judgments sets forth such a finding.

The proposed Final Judgments are intended to ensure that the hospital defendants reach independent decisions about the wages they pay registered nurses by prohibiting agreements, discussions, or other communications among competing hospitals of current and prospective registered nursing wages, and to ensure that USHHRA and the UHA are not used as forums or means for hospitals to exchange nonpublic prospective and current wage and budget information about registered nursing wages.

A. Prohibitions and Obligations

The Hospital Defendants' Final Judgment enjoins the hospital defendants from entering into any agreement with any other health care facility to fix nursing wages. It also prohibits them from discussing with any health care facility in Utah or with any third party, prospective or current budget or nursing wage information, or the timing of wage increases, except in very limited circumstances when the communications are solely for the purpose of recruiting or hiring a nurse.

The Hospital Defendants' Final Judgment further prohibits the hospital defendants from developing, supervising, or participating in a salary survey asking for current or prospective wage information concerning nurses or in which the wage information is presented in a manner that would allow participants to determine what another health care facility in Utah is, has been, or will be paying its nurses.

The Hospital Defendants' Final Judgment obligates each hospital defendant to file with plaintiff, on or before each anniversary date of the Final Judgment, a statement that the defendant has complied with the terms of the Final Judgment and has had no communications of the type prohibited under the Final Judgment.

The Hospital Defendants' Final Judgment also provides that an authorized representative of the Department of Justice may visit the defendants' offices, after providing reasonable notice, to review their records and to conduct interviews regarding any matters contained in the Final Judgment. The defendants may also be required to submit written reports, under oath, pertaining to the Final Judgment.

The USHHRA Final Judgment prohibits USHHRA from conducting or facilitating any exchange or discussion by or between any health care facility employees of information concerning the current or prospective compensation paid to nurses. It also prohibits USHHRA from conducting or facilitating any exchange or discussion of information concerning compensation previously paid to nurses unless a written log or audio or audio/visual recording of such exchange or discussion is made.

The UHA Final Judgment prohibits the UHA from sponsoring or facilitating any exchange or discussion by or between any health care facilities of information concerning the compensation paid to nurses. The UHA Final Judgment does not, however, prohibit the UHA from sponsoring or publishing a survey of information concerning the compensation paid to nurses if, among other things: (1) Any request for and dissemination of information is in writing, (2) the survey includes only historic or current compensation information and does not request or disseminate prospective compensation information, (3) the survey only disseminates aggregate data that is presented in a manner that would not allow participants to determine what another health care facility in Utah is, has been, or will be paying its nurses, and (4) health care facilities in Utah do not have access to unaggregated data produced in response to the survey.

The USHHRA and UHA Final Judgments have reporting and visitation provisions similar to the Hospital Defendants' Final Judgment.

B. Scope of the Proposed Final Judgments

The Hospital Defendants' Final Judgment applies to the hospital defendants, as well as to each of their trustees, officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise. Moreover, pursuant to the terms of the Final Judgment, any person who becomes a trustee, officer, director, administrator, chief financial officer, non-clerical human resources and compensation staff member, director of nursing, or nurse recruiter within 5 years after the entry of the Final Judgment shall be furnished a copy of the Final Judgment.

The USHHRA and UHA Final Judgments have applicability and notification provisions similar to those of the Hospital Defendants' Final Judgment.

C. Effect of the Proposed Final Judgments on Competition

The relief in the proposed Final Judgments is designed to ensure that hospitals in Salt Lake County establish their registered-nurse wages independently and that registered nurses receive competitive wages. Specifically, the injunction against exchanges of current and prospective wages and budget information and the reporting requirements of Section IV and Section VI of the Hospital Defendants' Final Judgment are designed to eliminate restraints on wage competition among hospitals in Salt Lake County. The injunction against conducting or facilitating the exchange of information concerning the compensation paid to nurses and the reporting requirements of Sections IV and VI of both the USHHRA and UHA Final Judgments are designed to preclude those organizations from being forums or means for hospitals to exchange nonpublic prospective and current wage and budget information about registered nursing wages.

The Department of Justice believes that these proposed Final Judgments contain adequate provisions to prevent further violations of the type described

in the Complaint and to remedy the effects of the alleged conspiracy.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgments will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgments have no *prima facie* effect in any subsequent lawsuits that may be brought against the defendants in this matter.

V

Procedures Available for Modification of the Proposed Judgments

As provided by the Antitrust Procedures and Penalties Act, any person beliving that the proposed Final Judgments should be modified may submit written comments to Gail Kursh, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., room 9903, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to entry. Section I of each of the proposed Final Judgments provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgments.

VI

Alternative to the Proposed Final Judgments

The alternative to the proposed Final Judgments would be a full trial of the case against the defendants. The Department of Justice believes that such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgments provide the relief that the United States seeks in its Complaint.

VII

Determinative Materials and Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgments.

Dated:

Respectfully submitted,

Edward D. Eliasberg, Jr.

Karen L. Gable

Jesse M. Caplan

Kenneth M. Dintzer

Attorney, U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001, 202/307-0808.

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing Competitive Impact Statement was sent by regular mail on this 14th day of March, 1994, to:

Jay D. Gurmankin, 1010 Boston Building, #9 Exchange Place, Salt Lake City, Utah 84111.

Richard W. Casey, Giauque, Crockett, & Bendinger, 500 Kearns Building, Salt Lake City, Utah 84101.

Robert D. Paul, Thomas C. Hill, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Gordon B. Nash, Jr., Gardner, Carton & Douglas, suite 3400—Quaker Tower, 321 N. Clark Street, Chicago, IL 60610-3381.

Phillip Proger, Robert Jones, Jones, Day, Reavis & Pogue, 1450 G Street, NW., Washington, DC 20005-2088.

Greg Tucker, 1 Park Plaza, Nashville, TN 37203.

Brent Ward, Parry, Murray, Ward & Cannon, 1270 Eagle Gate Tower, Salt Lake City, Utah 84111.

Karen L. Gable,

Attorney, Antitrust Division.

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DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by